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IN THE COURT OF APPEALS OF INDIANA

JOHN HATCHER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0603-CR-142
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff .	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49F09-0511-FD-190201

January 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant John Hatcher appeals his conviction for Operating While Intoxicated (OWI),[1] a class D felony. Specifically, Hatcher argues that the evidence presented at trial was insufficient to sustain his conviction because field sobriety tests are not always accurate. Finding that the evidence was sufficient, we affirm.

FACTS

At approximately 2:00 a.m. on November 3, 2005, Butler University Police Officer Scott Rolston and Corporal Chris Marcum were in their squad car patrolling near Butler University when they observed Hatcher's vehicle traveling northbound on Capitol Avenue. Hatcher stopped for approximately ten seconds at an intersection where there was no stop sign or traffic light. The officers began to follow Hatcher's vehicle and observed him making two right turns, one of which was "wide." Tr. p. 33. After making the wide turn, Hatcher did not correct his vehicle and began to drive down the center of the two-way street. The officers initiated a traffic stop after Hatcher drove down the center of the roadway for approximately one block.

Officer Rolston approached Hatcher and smelled a strong odor of alcohol emanating from the vehicle. Hatcher's eyes were glassy, his speech was "very slurred," and he fumbled through his wallet in his attempt to produce identification. Id. at 12. Officer Rolston asked Hatcher to exit the vehicle so that he could perform field sobriety tests. Hatcher informed the officers that he had no injuries that would prevent the tests from being administered. Officer Rolston performed three field sobriety tests—the horizontal gaze nystagmus (HGN), the

[1] Ind. Code § 9-30-5-3.

nine-step walk and turn, and the one leg stand. Hatcher failed all three tests.

Based upon his training, Officer Rolston concluded that Hatcher was intoxicated. He read Hatcher the implied consent warning, but Hatcher refused to submit to a chemical test and was placed under arrest. The State charged Hatcher with class A misdemeanor OWI and class D felony OWI.

A jury trial was held on February 1, 2006, and the jury found Hatcher guilty of class A misdemeanor OWI. Hatcher pleaded guilty to the class D felony enhancement because of a 2003 OWI conviction. A sentencing hearing was held on February 15, 2006, and Hatcher was sentenced to seven hundred and seventy-six days imprisonment. Hatcher now appeals his conviction.

DISCUSSION AND DECISION

Hatcher argues that there was insufficient evidence to sustain his conviction. Specifically, Hatcher argues that the evidence was insufficient because field sobriety tests are not always accurate; therefore, his OWI conviction was based on "pure speculation." Appellant's Br. p. 6.

The standard of review for sufficiency claims is well settled. In addressing Hatcher's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949

(Ind. 2001). A conviction may be sustained on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

We initially note that Hatcher is not challenging the enhancement of his offense from a class A misdemeanor to a class D felony because he pleaded guilty to the enhancement. Appellant's App. p. 65. On appeal, Hatcher instead challenges the sufficiency of the evidence the State presented to prove class A misdemeanor OWI. To convict Hatcher of class A misdemeanor OWI, the State had to prove beyond a reasonable doubt that Hatcher operated a vehicle while intoxicated in a manner that endangered a person. I.C. § 9-30-5-2(b). "The element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle could have endangered any person, including the public, the police, or the defendant." Ashba v. State, 816 N.E.2d 862, 866-67 (Ind. Ct. App. 2004). Moreover, "[c]onvictions of operating while intoxicated may be supported by circumstantial evidence." Id.

Here, the evidence presented at trial showed that Hatcher stopped his vehicle for approximately ten seconds at an intersection where there was not a stop sign or a traffic light. Tr. p. 8-9. As the police officers continued to observe him, Hatcher made a wide turn onto a two-way street, crossed the center lane, and drove in the center of the roadway for one block before the police stopped him.[2] Id. at 10. When Officer Rolston approached Hatcher's vehicle, he detected a strong odor of alcohol emanating from Hatcher and the vehicle. Id. at

[2] Driving in the center of a two-way roadway is sufficient evidence that the intoxicated driver endangered a person. See Smith v. State, 725 N.E.2d 160, 162 (Ind. Ct. App. 2000) (holding that a defendant's actions—failing to stop at a red light before turning right, making a wide turn, and crossing the center line of the roadway— were sufficient to prove that the defendant drove in a manner that endangered a person).

11. Officer Rolston noticed that Hatcher's eyes were glassy and that he exhibited "very slurred" speech. Id. at 11-12. When Officer Rolston asked him for identification, Hatcher fumbled through his wallet and demonstrated poor manual dexterity. Id. at 12. Officer Rolston performed three field sobriety tests—the HGN, the walk and turn test, and the one leg stand test. Id. at 13-24. Hatcher failed all three tests and Officer Rolston, based on his training and experience, concluded that Hatcher was intoxicated. Id. at 24-25.

While Hatcher argues that field sobriety tests are unreliable and should be insufficient to prove intoxication, Officer Rolston testified at trial that the "HGN [accuracy] is seventy-seven percent (77%), the walk and turn [accuracy] I believe is sixty-eight percent (68%), and the one leg stand [accuracy] is sixty-four percent (64%)." And, as detailed above, Officer Rolston concluded that Hatcher was intoxicated not merely because he failed three sobriety tests, but also because he had slurred speech, glassy eyes, poor manual dexterity, and smelled of alcohol. Hatcher's argument on appeal is an invitation for us to reweigh the evidence and assess the credibility of the witnesses—an invitation we decline. Thus, we conclude that Hatcher's challenge to his conviction must fail.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.